

Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Advanced Television Systems and)
Their Impact Upon the Existing)
Television Broadcast Service)

MM Docket No. 87-268

To: The Commission

OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION

Jovon Broadcasting Corporation ("Jovon"), the licensee of WJYS(TV), Hammond, Indiana, respectfully opposes the Petition For Partial Reconsideration ("Petition") filed on April 20, 1998 in the above-referenced proceeding by the Milwaukee Area Technical College District Board (the "Board"), the licensee of WMVT(TV), Milwaukee, Wisconsin. The Board seeks a change in its allotted digital television ("DTV") facility to reflect a pending application to modify its NTSC facilities. But that modification, if granted, would drastically worsen WJYS' DTV channel assignment. Thus, neither the Board's proposed modification nor its present Petition can be granted without a change in the DTV facility assigned to Jovon.¹

WJYS currently is licensed to operate on Channel 62 at Hammond and WMVT on Channel 36 at Milwaukee. In the proceeding to implement DTV, the Commission assigned WJYS Channel 36 and WMVT Channel 35 for DTV operations.² Thus, WJYS' DTV

¹Jovon previously filed its own Petition For Reconsideration of its DTV facility, which the Commission denied. An appeal of that action is now pending before the U.S. Court of Appeals for the D.C. Circuit. The combination of the Commission's denial of Jovon's Petition and the Board's own Petition to replicate proposed facilities that would interfere with Jovon's DTV channel requires that the problem of interference to WJYS' DTV assignment be addressed at this time.

²See Sixth Report and Order in MM Docket No. 87-268, 12 FCC Rcd 14588 (1997)

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operations will be on the same channel as WJYS' current NTSC operations during the transition.

WJYS is one of 12 commercial, for-profit television stations in the Chicago Designated Market Area ("DMA").³ The Commission assigned all 11 of WJYS' competitors a DTV channel that would allow their station to operate from the antenna farm located in downtown Chicago. But the DTV assignments on Channels 35 and 36 effectively orphaned WJYS from its market's prime transmitting spot and precluded the station from serving the entire market.

Jovon filed a timely Petition for Reconsideration ("Petition") seeking a new DTV allotment that would allow the relocation of WJYS' DTV antenna to the Sears and Hancock Buildings.⁴ As Jovon pointed out therein, an allotment that would deny WJYS access to its entire market, but at the same time allow *every one* of the station's competitors to operate from the optimal location in the market, is the very antithesis of the FCC policy to "ensur[e] that all stations are able to provide DTV service competitively within their respective markets."⁵ But the Commission refused to change the WJYS DTV allotment, reasoning that the DTV allotments are intended to provide only for service replication of a station's existing facilities.⁶

²(...continued)
 ("Sixth DTV Order"), Memorandum Opinion and Order on Reconsideration, FCC 98-24, 63 Fed. Reg. 13546 (Mar. 20, 1998) ("Reconsideration Order").

³See Television and Cable Factbook, 1998 Edition, p. A-373.

⁴This solution not only would have ensured the competitiveness of WJYS, but served other DTV and longstanding FCC policy goals as well, as detailed in Jovon's Petition.

⁵Sixth DTV Order at para. 30.

⁶Reconsideration Order at para. 547.

Jovon's petition for review of that decision remains pending before the U.S. Court of Appeals for the D.C. Circuit.

The Board's current Petition asserts that the Commission should have based WMVT's DTV assignment on the parameters proposed in a pending application to modify that station's NTSC facilities on Channel 36. Instead, the Commission sought to replicate facilities licensed as of April 3, 1997, without taking into account pending modification applications. The Board claims this was inequitable, in light of the Commission's decision to grant applications for *new* stations pending as of that date and allow conversion to DTV. The Board also argues that any FCC decision limiting NTSC modification applications to analog service alone would put a licensee at a competitive disadvantage vis-a-vis its digital competitors.

The Board's Petition fails to address the adverse impact of its pending modification application on WJYS' DTV facility. Not only would WJYS be unable to compete on equal footing with the other Chicago market broadcasters, it would be saddled with a DTV operation that fails to even replicate its existing service area, contrary to the policy cited by the Commission as controlling in DTV allotment decisions. Thus, the Commission cannot grant the Board's modification application, a prerequisite to the grant of DTV facilities replicating that modification.

The application which the Board seeks to replicate would move the WMVT transmitter 0.15 kilometers to the southeast and change its antenna height above average terrain. In response to an FCC staff directive, the Board amended its application on January 8, 1998 to address the adverse impact of its proposed facility on the WJYS DTV service area. That amendment concedes that interference from its proposal would slash WJYS' DTV service area

by 19.1 percent and service area population by 18.6 percent, a loss of *over a million people*.⁷

This should not be surprising, as that site was chosen with an eye towards expanding coverage in the direction of Chicago through the Kenosha suburban corridor. Although the Board asserts that this loss of service is actually "comparatively modest" in light of its own station's gains from the proposal, its engineer predicts that WMVT's current service area population would gain only 403,768, *less than half of WJYS' loss*.⁸ Clearly, the losses that the Board would impose on WJYS would be neither comparatively modest nor justified by WMVT's gains.⁹

As set out above, the Commission's rationale in reaffirming Jovon's DTV assignment was that the assignment would replicate the station's current service area.¹⁰ If the Board's application is granted, however, WJYS' DTV service area population will be significantly smaller than the station's current service area population, in contravention of the very policy the Commission cited with respect to WJYS. It is WJYS that will be at a significant

⁷The Board's engineer predicts that the WJYS DTV service area population would shrink from 5,389,629 to 4,388,221. Application for Modification of WMVT, File No. BPET-940610KE, Engineering Statement filed January 8, 1998 ("WMVT Engineering Amendment") at 3.

⁸The Board's engineer predicts that WMVT's existing service area population would increase from 1,875,000 to 2,278,768. WMVT Engineering Amendment at 3.

⁹Jovon is also today filing an Opposition to the Board's modification application on grounds similar to those stated herein.


¹⁰Although the Board's engineer apparently was unable to derive the same population estimates for WJYS as the Commission, the important point for purposes of this Opposition is the Commission's conclusion that the WJYS DTV service area population (6,950,000) would approximate the station's current service area population (6,855,000). Reconsideration Order, Appendix B, at B-17.

competitive disadvantage in the digital marketplace, the very rationale relied upon by the Board's Petition.

Accordingly, Jovon respectfully submits that if the Commission is to prevent destruction of WJYS' service, and honor its DTV policy goals, then the Commission may only grant the Board's application -- and modify WMVT's DTV facility -- if the two licensees are able to reach a mutually-beneficial agreement regarding the acceptance of interference on Channel 36 during the transition period. Specifically, Jovon would be willing to accept interference from the proposed new WMVT facility during the transition if the Board was, in turn, willing to accept interference from a new WJYS DTV facility on the same channel operating from the common antenna farm in Chicago. Pursuant to such an agreement, both stations would be permitted to improve their DTV coverage in their primary markets. But the Commission cannot grant the Board's application or modify its DTV facility accordingly without any change to WJYS' currently assigned DTV facility.

Respectfully submitted,

JOVON BROADCASTING CORPORATION



Howard A. Topel
Christopher G. Wood

Fleischman and Walsh, L.L.P.
1400 16th Street, NW, Suite 600
Washington, DC 20036
202/939-7900

Dated: May 15, 1998
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Its Counsel

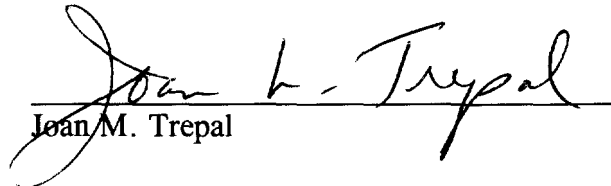
CERTIFICATE OF SERVICE

I, Joan M. Trepal, a secretary at the law firm of Fleischman and Walsh, L.L.P. hereby certify that copies of the foregoing Opposition to Petition For Partial Reconsideration were served this 15th day of May 1998, via regular mail, upon the following:

Robert A. Woods, Esq.
Schwartz Woods & Miller
1350 Connecticut Avenue, NW
Suite 300
Washington, D.C. 20036
*Counsel for Milwaukee Area Technical
College District Board*

Mr. David Bennett
Mass Media Bureau, Television Branch
Federal Communications Commission
1919 M Street, NW--Room 700
Washington, D.C. 20554

Mr. Gordon Godfrey
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.--Room 566
Washington, D.C. 20554


Joan M. Trepal